

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

**SUB COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY
SB 103**

Call to Order: By **VICE CHAIRMAN FRED THOMAS**, on February 1, 1999
at 10:30 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Eve Franklin (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Subcommittee meeting & Date(s) Posted: SB 103, 1/28/1999
Executive Action:

SUB COMMITTEE MEETING ON SB 103

Informational: Russell Hill, Legal Counsel, Auditor's Office
Jon Metropoulos, Farmers Insurance Group
Mark Baker, American Council of Life
Insurance
Susan Witte, Blue Cross/Blue Shield

CHAIRMAN FRED THOMAS called the Subcommittee meeting to order and
said that **SEN. GRIMES** was presenting a bill in Senate Judiciary
Committee, and he asked **Chairman Thomas** to vote on his behalf.

He said that **Russell Hill** did what they asked him to do, he has
given them the form in essence a Grey Bill. This is from him

Russell Hill, State Auditor's Office, not to be confused with the official Grey bill from the Legislative Services Division, but the same thing.

EXHIBIT (phs25b01)

He asked **Russell Hill, Chief Legal Counsel, State Auditor's Office** to start by explaining and walking them through the Grey copy of **SB 103**.

Russell Hill said actually amendments were coming in still this morning. He thinks he has them plugged in and may have plugged in more than the committee intended.

Russell Hill then walked through the amendments, various options and who presented them in conjunction with the Grey Bill.

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4}

CHAIRMAN THOMAS said to **SEN. FRANKLIN** he would entertain a motion to remove the language starting with "additional going through function" from the Grey Bill.

Motion: **SEN. FRANKLIN MOVED THAT THE LANGUAGE DISCUSSED AND EXPLAINED BY CHAIRMAN THOMAS BE REMOVED FROM THE GREY BILL.**

Vote: With **SEN. GRIMES** voting "yes" by proxy, **the motion carried**
-3-0.

Russell Hill continued to explain the amendments, definitions, various options and who presented them in conjunction with the Grey Bill.

{Tape : 1; Side : A; Approx. Time Counter : 4 - 7}

Russell Hill said they were on Page 5. This is one of the amendments offered by the Auditor's Office to clarify that the insurance company who originally gets the healthcare information from the doctor. This gives all the interested parties a comfort level.

He explained Page 7 and the top of Page 8. There at subsection (3) on Page 7 and Page 8.

CHAIRMAN THOMAS clarified the language in the Grey Bill is on Page 7 and the bill itself is on Page 8, if they want follow both.

Russell Hill continued with his explanation and understanding of how the amendments would work.

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 8.4 - 10.6}

CHAIRMAN THOMAS and **SEN. FRANKLIN** agreed to accept 9(a), but not 9(b)

CHAIRMAN THOMAS continued to explain that they would accept the first amendment in subsection 8, where it refers to the subsection 9. He asked about the term "upon request"?

{Tape : 1; Side : A; Approx. Time Counter : 10.6 - 11.3}

Russell Hill explained that was essentially a recommendation by Blue Cross which clarifies the intent, that the company doesn't have to just compile those even if nobody requests them.

CHAIRMAN THOMAS said so that is okay, and **SEN. FRANKLIN** agreed.

CHAIRMAN THOMAS said the next one on privileged information pursuant to subsection 2 through 17 of 306.

Russell Hill continued to explain. This goes hand in hand when they get to the end of the bill with the deletion of rule making authority having to do with record keeping requirements. This is to clarify the three year record keeping requirement that applies both disclosures with permission of an individual and disclosures that they didn't have permission for, but are authorized by those subsections. And the Department doesn't mind taking out the Commissioner's rule making authority as long as its clear that the whole group of disclosures is subject to the record keeping requirement. He thinks this is satisfactory to ACLI and to most of the industry folks as a way to get rid of that rule making authority.

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 11.3 - 12.9}

CHAIRMAN THOMAS asked on that same Page 8(a), during the preceding three years, that is some of the same language?

Russell Hill said yes, that is some of the language that the Auditor's Office had proposed.

Discussion:

Most comments from those attending the meeting thought they should leave this language in there.

CHAIRMAN THOMAS asked about Page 8.

Russell Hill commented this was one of the items that he wasn't sure about. But explained the record keeping language.

{Tape : 1; Side : A; Approx. Time Counter : 12.9 - 16}

CHAIRMAN THOMAS said if it used within the insurance function, that is not the intent of the bill is to stop this use of information within the use of practicing insurance functions. He clarified further, the intent of the bill is not to stop this information from flowing within the use of insurance functions. He (**Russell Hill**) is just saying this stops them from having to track the use of it?

Russell Hill said this amendment would, first of all not let them have to track, so you have a disclosure on the authorizations of the three years. Yet in virtually all instances the person can't track it for three years. This requires them not even to track disclosures for an insurance function that don't have the permission of the individual and that aren't authorized by one of those 16, or 15 subsections.

Discussion:

Russell Hill stated it is the Department's intent that they could just be able to tell somebody they looked at the record, and what they looked at. It not all is meant to require them on an on going basis maintain a separate record. He asked what language would work besides the record?

{Tape : 1; Side : A; Approx. Time Counter : 16 - 20.4}

Susan Fox said to change it to "a record". **Chairman Thomas** agreed saying change "the" to "a".

Motion: SEN. FRANKLIN MOVED THE AMENDMENT TO STRIKE "THE" AND INSERT "A".

Discussion:

Mark Baker wanted to check with ACLI and his association about the other language "upon request."

SEN. FRANKLIN asked how long would that take.

Mark Baker said he could make a phone call. **SEN. FRANKLIN** said they wanted to report to the Public Health Standing Committee today.

{Tape : 1; Side : A; Approx. Time Counter : 20.4 - 26.2}

CHAIRMAN THOMAS said if he could get an answer today and they could make it a part of their report.

Discussion:

Russell Hill continued to move through the bill explaining the amendment, definitions and thrust of the bill.

{Tape : 1; Side : A; Approx. Time Counter : 26.2 - 35; Comments : Balance of tape is poor quality, defective, and wording is garbled.}

{Tape : 2; Side : A; Approx. Time Counter : 0.3}

Russell Hill explained that the companies can disclose your financial information, lots of private information that's not health care. He agrees that is not the thrust of the bill, but this would expressly allow that. They can disclose it. **EXHIBIT (phs25b02)**

They passed out those affiliate, those organizational charts, they can disclose it throughout their entire system, so that even if you just say we are disclosing it for insurance, if he buys health insurance all of a sudden, a company can start pitching him on auto insurance, work compensation, annuities, any kind of financial products that really have nothing to do with his original purchase of the health insurance. So that's a real broad loop hole that you are still adding there. And the definitions of products and services, what's an insurance product or an insurance services is not defined in the bill so it is a little narrower than current law in terms of marketing for insurance purposes. But it is still hugely broad, he doesn't know if that add anything to the discussion.

Paige Dringman said HIAA would also support this language, but they offer a further protection measure, by using some language from the NAIC model that says with respect to the marketing of insurance products, the individual shall be given an opportunity to indicate that he or she does not want this information used for marketing purposes. So that would give them a way to say, don't use it. And maybe that would address a little bit of **Russ Hill's** concerns.

Susan Fox asked, just so she is clear, they have the existing language 12, which had some of this in it, but is now stricken. They have a new proposal 12A, or 12B, or what used to be

subsection 13 and is now 12, because she sees the same language popping up in both 12's now, and she just wants to be clear that is basically the options they are looking at.

CHAIRMAN THOMAS clarified that 12A and 12B are one.

Susan Fox asked further, but then there is the second set, right? The language that **Paige Dringman** was actually in stricken #12?

Paige Dringman answered you have re-insert that language that was stricken out on 12B. **Susan Fox** said thank you.

SEN. FRANKLIN said if you go to the bill the usual language, they are really kind of broadening the issue because we are now allowing certain privileged information. To her mind, some of the spirit of this, a person who sees himself as a patient, is involved with an insurance company with the sense they are health care entity and then they bear their sole and provide some privileged information which then this financial institution which is also a healthcare entity an insurance company, then can use for a variety of other financial purposes. The issue is more, what is the core of the issue and the core is, is there a betrayal of citizen trust when they share privileged information to an insurance company who says they are concerned about the best interest of the patient, and then that privileged information and use it in a way that the person may not want used.

She thinks this language, although it is more elegant, broadens, in a way gives sort of a pro-actively, pro-actively gives them more opportunity than before in certain ways. She is concerned about that and she thinks that gets to the heart of it. It's narrower than the broadest opening, but it flies in the face of what the intent of this is, really to say, you don't betray the trust of a person who has shared private information who then gives it to the insurer. That is her bottom line.

CHAIRMAN THOMAS said of course it has to do with medical records from what he got out of it was the tenor, names and addresses is somewhat different.

SEN. FRANKLIN said names and addresses are some what different, but what about financial status, or family relationships.

CHAIRMAN THOMAS said with the intent of her bill to protect private medical records and keep them that a way, in writing and crafting a document that does that you have the ability to spill over and do unintended consequences. That is what people keep coming back and saying, don't tighten it here and don't tighten

is there. He thinks that is what this amendment is really about. Because it is trying to alleviate unintended consequences. It's kind of like the information he gets from his bank, or his mortgage company, and others. He always get solicitations for life insurance which kind of irrate him, but yet there are using his name and address as a client of there's, and its not a big deal, he promptly throws them away. It is a form of junk mail. In his case if he wanted to do that with clients he could mail them a broad base solicitation too, but he is not using their medical records.

SEN. FRANKLIN said the issue to her goes beyond. To her mind it is more than junk mail. The issue is an insurance institution who's primary concern is healthcare and healthcare management then has some privilege information that they might not share with financial institution and then they can use it to market. It is better if medical information is not included. Then what's non-medical information, family members, death of spouses, marital status, so they are going beyond even junk mail, it goes to who else has your personal and medical information. So there still is personal information.

CHAIRMAN THOMAS answered he is used to the term junk mail as his evaluation of some solicitations. He asked **Susan Fox** about their options, one options is 12A and B, and the second option is the language in the middle of 12 as the bill provides, the old section 13, and that's most of the language in there, starting with "or".

Russell Hill said the first "or" before that deleted language in the new subsection 12 was Farmers' Insurance alternative option. The language starting with "or" after the deleted language, was ACLI's (American Council of Life Insurance) suggestion. They operate a little bit differently, again the Committee really has three alternatives.

CHAIRMAN THOMAS clarified they have the first "or" and second "or" are numbers option 2 and 3, or you have 12A and 12B at the top.

Paige Dringman said if they go with one of those and they wanted to address some of the concerns raised by **Russell Hill** and **SEN. FRANKLIN** they would re-insert some of the language from the old #12 that protected the individual or gave the individual an out by saying he doesn't want it marketed.

Russell Hill said what they are talking about here are those instances when a company can disclose without the individuals permission. He is not sure how giving them an opportunity to

indicate he doesn't want personal information disclosed for marketing purposes, he is not sure how that fits in with the disclosure that's without their permission. They have already allowed clearly the blanket authorization to disclose. What **Paige Dringman** is suggesting is a blanket authorization and you essentially have to take an affirmative act to prevent marketing. It seems to him in real life as opposed to conceptually that means everybody is going to give permission for marketing whether they really know it or mean to or not.

CHAIRMAN THOMAS indicated to **SEN. GRIMES** that they were on Page 10 and their options are to adopt the Amendment of 12A and 12B, or their second option is the new 12, starting with the first "or" for the marketing of an insurance or finance product or services. That's option number two. The third option, starts with the next "or" disclosure of limited to which reasonably necessary, etc. So those are the three options. He thought they should include one of those here, **SEN. FRANKLIN**, and he seems to favor 12A and 12B.

CHAIRMAN THOMAS asked **SEN. FRANKLIN** if the could briefly revert back to Page 8, and revisit #C, they will not include that, okay then C is done.

Russell Hill asked if he could at least float the possibility that if the Subcommittee is looking at adopting 12A and 12B, that they at least delete the language, "or financial product so the they not in respect broader than current law.

CHAIRMAN THOMAS asked does current law prohibit them from doing that?

SEN. FRANKLIN said it doesn't expressly state it, she doesn't know if it prohibits.

Jon Metropoulos, said he doesn't believe at this point, without enacting this bill or something similar to it, that they are prohibited. In fact the ability to market is much broader, so he's wanted to jump in here and say this is actually not broadening the scope at all of current law. It's reducing it quite a bit to specific information non-medical record information for specific purposes, insurance and financial products. So even under this a pharmaceutical companies couldn't call you up. He had proposed amendments.

EXHIBIT (phs25b03)

Susan Fox said some of this has to do with changes in federal law over the past couple of years, but there used to be fire walls between the insurance industry and the banking industry, and some

of that has changed evolved as technologically has. So some of it, she doesn't disagree with **Jon Metropoulos** said, but she wants to say that it's not only at the state level, but these changes have happened, but it is at the federal level that things have allow more of the dovetailing of the two industries into basically a single industry.

Russell Hill said to **Jon Metropoulos**, he agrees with him that subsection 12, that they are knocking out is hugely broad, but at least the old 13, the new subsection 12 limited that to marketing of an insurance product or service. That's where they were focusing on. Financial products would be an expansion of that, correct.

Jon Metropoulos responded saying he doesn't have his bill handy, but as he read the old 12, that allowed disclosure to any person, that was the problem there, but it didn't contain that constricted if you will, to using it for insurance products. He thought the old 13 had that.

Russell Hill said the way he is saying it is, 12 completely swallowed the old 13, right, is there a difference?

Jon Metropoulos said he didn't know what the practice was, but he assumes it did, yes and that is why they are trying to get rid of 12. **Russell Hill** answered yes.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 8; Comments : Subcommittee stood at ease for several minutes.}

Russell Hill asked if this is the one that if they adopted those back on 12A and 12B, this becomes really unnecessary, or not?

CHAIRMAN THOMAS answered if 12B and 12B goes in this is unnecessary. **Russell Hill** commented this was kind of an alternative approach.

CHAIRMAN THOMAS said they will revert to Page 10, 12A and 12B, **SEN. GRIMES's** has a motion.

Motion: **SEN. GRIMES MOVED SB 103 GRAY BILL, PAGE 10, 12(a) AND 12(b) BE ADOPTED.**

CHAIRMAN THOMAS clarified in that motion they would be stating that they do not include the language on Page 3 "INTRA-INSURANCE INSTITUTION MARKETING, INTRA-AFFILIATE MARKETING, and thirdly that they include those expanded definitions in Section 1 18). That they expand the "medical record information" to include "medical claims history".

Discussion:

About the language "medical claims history" versus "medical history"

SEN. FRANKLIN reiterated the three part amendment being "medical claims history", 12(a) and 12(b), and allowing the language on Page 3.

SEN. FRANKLIN said for the record she can live with "medical claims history". She has already made her statement about putting the intra-institutional marketing, although she would agree with that as an issue. It's messy law, but she will have to resist 12(a) and 12(b).

Vote: **SEN. GRIMES'** motion to amend SB 103 Gray Bill, Page 10, 12(a) and 12(b) and other clarifying language was adopted. With **SEN. FRANKLIN** voting "no", the motion carried -3-0.

Susan Fox clarified if they accept 12(a) and 12(b) then on Page 10, the new subsection 12 that was supposed to replace the old subsection 13 in unnecessary. Both the language that is existing in the bill, plus the Farmers and the ACLI, because it has been reiterated in 12(a).

CHAIRMAN THOMAS confirmed that is correct. They are not going to in Section 12, as it is listed there, in **SB 103 Gray Bill**, they would not do any three of those amendments.

Susan Fox said they don't even need existing language any longer, correct? Because it is using that affiliate who's only information will be in connection with an audit, so basically it has been reiterated in 12(a).

Russell Hill said he doesn't see the difference between 12(a) and 12(b) and what's the new 12.

CHAIRMAN THOMAS said he would entertain a motion to strike Section 12, starting with "disclosure" through "persons." Without objection that will be their report.

CHAIRMAN THOMAS said they will be on Page 4.

Russell Hill said what this means now because "non-medical record information" has become the lynch pin of what they did on Page 10, with 12(a) and 12(b) for marketing, under the current definition of medical information, its only information that's obtained under subsection (b), from a medical professional or

medical care institution from the individual or from the individual's spouse, parent or legal guardian.

Frankly he is deathly afraid of the argument that if they got it from another company, if they got it through any of these indirect disclosure doesn't come strictly within this definition. That's the only intention of putting in directly or indirectly. If they are afraid of the term indirectly, then maybe they say is obtained, "is obtained from a medical profession."

Discussion:

CHAIRMAN THOMAS indicated they were just clarifying that "medical record information" means these definitions they have stated and is obtained "directly or indirectly" defined down to individual or individual spouse, or legal guardian.

SEN. FRANKLIN said she is trying to review her options. She worked hard on this bill, this is one of the better sessions in working through a bill, one of the better processes they have had. She wanted to thank **Chairman Thomas** and committee members for that. She is inclined to move a do not pass on the amendments or else a minority report, which ever is acceptable to the Committee. If they like the bill the way it is and want to report it out. She doesn't know how they want to proceed.

SEN. GRIMES said they had a few of those on the House side, and it seemed like it did work fairly well to have a Minority Report because then the full committee really makes the decision, so you have both sides represented. They have narrowed it down between the bill and the Gray Bill, whether they have it in time to go to the committee, he thinks it has come down to one or two issues. So with that he would move an alternate motion that SB 103 Do Pass.

CHAIRMAN THOMAS said to **Susan Fox**, if **SEN. GRIMES'** motion passes he would ask that she work with **SEN. FRANKLIN** on the element that she has discussed.

Vote: **SEN. GRIMES' MOTION THAT SB 103 RECEIVE A DO PASS AS AMENDED RECOMMENDATION FROM THIS SUBCOMMITTEE**, with **SEN. GRIMES** and **SEN. THOMAS** voting "yes", the motion carried -2-0.

Russell Hill said there was one amendment that was from the Department of Public Health and Human Services that **Susan Fox** drafted.

Susan Fox clarified it helps with managed care. She explained right now there is language in the bill, back in the disclosure section, regarding governmental disclosure that is limited to that which is reasonably necessary may be made to governmental authority. This amendment would strike the language requiring, it is kind of similar to the Department of Justice concern. So take out the language requiring the individual separate written authorization, but then it also states that, "the only purposes that it can be done for are determining the individuals eligibility for health benefits, or as required by federal or state law, DPHHS because it is a Medicaid program and it is required that they report certain information to the federal agencies.

CHAIRMAN THOMAS said they will adopt that amendment in the Subcommittee Report.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 32}

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. DUANE GRIMES, Vice Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs25bad)